

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

MICHAEL ALLEN,
Petitioner-Appellant.

v.

No. 00-6903

JOHN TAYLOR, Warden,
Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Virginia, at Richmond.
David G. Lowe, Magistrate Judge.
(CA-00-117)

Submitted: September 20, 2000

Decided: October 10, 2000

Before LUTTIG and TRAXLER, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Dismissed in part, vacated in part, and remanded with instructions by
unpublished per curiam opinion.

COUNSEL

Michael Allen, Appellant Pro Se. Stephen R. McCullough, Assistant
Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Michael Allen seeks to appeal the magistrate judge's* order denying relief on his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 2000). We have reviewed the record and the magistrate judge's opinion and have determined that additional factual determinations are required regarding Allen's claim of ineffective assistance of counsel on appeal, in light of the Supreme Court's decision in Roe v. Flores-Ortega, 528 U.S. ___, 120 S. Ct. 1029 (2000). Because the analysis prescribed by Roe is highly fact-specific, we conclude that it should be performed by the district court in the first instance. Accordingly, we grant a certificate of appealability as to Allen's claim of ineffective assistance relating to counsel's failure to demand review by a panel of the Court of Appeals of Virginia or petition the Supreme Court of Virginia for review, vacate the portions of the magistrate judge's order relating to that issue, and remand for further consideration in light of Roe.

We have reviewed the magistrate judge's disposition of Allen's remaining claims and find no reversible error. We therefore deny a certificate of appealability and dismiss the appeal on the reasoning of the district court as to those claims. See Allen v. Taylor, No. CA-00-117 (E.D. Va. June 13, 2000). We deny Allen's motion for oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED IN PART, VACATED IN PART, AND REMANDED WITH INSTRUCTIONS

*The parties consented to proceed before a magistrate judge pursuant to 28 U.S.C.A. § 636(c) (West 1993 & Supp. 2000).